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County of Alameda

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

GUSTAVO RIVAS RAMOS, as a proxy of
the State of California on behalf of
Aggrieved Employees,

Plaintiff,

v.

OVERFLOW PARTNERS, LLC,
D/B/A DELIVER-IT, DI OVERNITE,
LLC, and DI LOGISTICS LLC.

Defendants.

CASE NO. 25CV111179

**PRIVATE ATTORNEYS GENERAL ACT
LAW ENFORCEMENT ACTION**

1 Plaintiff Gustavo Rivas Ramos, by and through his undersigned attorneys, hereby brings
2 this Law Enforcement Complaint against Defendants, DI Overnite, LLC, DI Logistics LLC, and
3 Overflow Partners, LLC, all of whom are d/b/a Deliver-IT (hereinafter collectively referred to as
4 “Defendants”). Plaintiff brings the claims as a representative action on behalf of the State of
5 California and Aggrieved Employee. Plaintiff alleges as follows:

6 **NATURE OF THE CASE**

7 1. This case is brought as a law enforcement action under the Private Attorneys
8 General Act (PAGA), Cal. Labor Code §§ 2698, et seq., to address Defendants’ violations of the
9 California Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders.

10 2. Defendants own and operate a shipping company that offers ship-it, track-it,
11 return-it, and other delivery services to its customers in California, Nevada and
12 Arizona. Defendants provide overnight, same day and scheduled services to various businesses,
13 including court reporters, payroll, mortgage & real estate companies, financial institutions,
14 hospitals, medical supplies and pharmaceutical companies, the entertainment industry, and gift
15 basket companies, among others. Defendants offer next day service for pick-ups in the late
16 afternoon or later.

17 3. Defendants employed and/or jointly employed delivery drivers to carry out their
18 core delivery business. The delivery drivers are referred to herein as “Aggrieved Employees.”
19 Defendants oversee and closely supervisor their team of drivers, including on a day-to-day basis,
20 to ensure customer satisfaction. However, Defendants have collaborated together to misclassify
21 their drivers as independent contractors rather than employees. The misclassification has been
22 knowing, willful and intentional. Prior to June 2022, Defendants employed their Aggrieved
23 Employees and provided them with W-2s until they terminated their employment, and then
24 rehired and misclassified the Aggrieved Employees as independent contractors. Since that time,
25 Defendants have operated with a policy, pattern, and practice of regularly paying their drivers
26 late, less than what is owed for their deliveries, and/or not at all. This too has been intentional,
27 knowing, and willful. Further, Defendants have intentionally, knowingly and willfully
28 obfuscated their business relationships and structure with each other to evade liability for their

1 legal violations as set forth herein. However, Defendants have maintained and continue to
2 maintain a shared corporate enterprise that is intertwined in its structure, management, leadership,
3 and control over employees, such that throughout the relevant time period Defendants operated
4 as joint employers of drivers.

5 4. Defendants have operated in a coordinated and joint fashion to control, directly or
6 indirectly, the wages, hours, and working conditions of Plaintiff and the Aggrieved
7 Employees. Defendants also have suffered and permitted their labor. Defendants are joint
8 employers under *Martinez v. Combs* (2010) 49 Cal.4th 35, 64 (“to employ ... under the [wage
9 order], has three alternative definitions. It means: (a) to exercise control over the wages, hours, or
10 working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common
11 law employment relationship.”).

12 5. Despite labeling their drivers as independent contractors, Defendants exercise
13 extensive control, both direct and indirect, over the way drivers perform their job duties and the
14 terms and conditions of their work. This includes, but is not limited to: determining the amount
15 of compensation earned by drivers; paying wages; scheduling the payment of wages; owning
16 equipment, such as GPS and/or vans, used by drivers to make deliveries; training drivers to make
17 deliveries; maintaining the authority to hire, transfer, promote, discipline or discharge drivers;
18 establishing the work schedules and assignments of drivers; and, supervising and evaluating the
19 performance of drivers.

20 6. This case seeks civil penalties on behalf of the State of California and the
21 Aggrieved Employees to remedy numerous violations of the California Labor Code that result
22 directly from Defendants’ profiteering business model and practices.

23 7. First, Defendants have violated the Labor Code by willfully misclassifying
24 Plaintiff and other Aggrieved Employees as independent contractors rather than employees,
25 despite (a) Defendants exercising direct and indirect control over the work of their drivers; (b) the
26 drivers provide vital delivery services at the crux of Defendants’ business; and (c) Defendants
27 and the drivers engage in the same business of providing delivery services.

28 8. As a direct result of Defendants willfully misclassifying their drivers as

1 independent contractors, Defendants have also failed to pay their drivers for all hours worked,
2 Defendants have also knowingly, willingly and intentionally established a pay scheme that does
3 not pay drivers for all wages on a timely basis, does not provide itemized payroll statements
4 (much less itemized wage statements that are accurate), fails to timely pay all wages upon
5 separation from employment, fails to provide off-duty meal and rest periods, and fails to
6 reimburse for business expenses.

7 9. As a proxy for the State of California, Plaintiff seeks civil penalties, injunctive
8 relief, attorneys' fees, and costs of suit, as more fully set forth herein.

9 **JURISDICTION AND VENUE**

10 10. The Court has jurisdiction over this law enforcement action pursuant to Article 6,
11 § 10 of the California Constitution and California Code of Civil Procedure § 410.10.

12 11. Additionally, this Court has jurisdiction over Plaintiff's claims on behalf of the
13 State of California and Aggrieved Employees for civil penalties and injunctive relief in violation
14 of the Labor Code pursuant to California Labor Code §§ 2699 and 2699.3.

15 12. The Court has jurisdiction over Defendant DI Overnight, LLC because it is a
16 Nevada limited liability company authorized to do business in the State of California and is
17 registered with the California Secretary of State. DI Overnight, LLC has sufficient business with
18 sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the
19 California market through the advertising, marketing, and sale of goods and services, to render
20 the exercise of jurisdiction over it by the California court consistent with traditional notions of
21 fair play and substantial justice.

22 13. The Court has jurisdiction over Defendant DI Logistics, LLC because it is a
23 California limited liability company authorized to do business in the State of California and is
24 registered with the California Secretary of State. DI Logistics, LLC has sufficient business with
25 sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the
26 California market through the advertising, marketing, and sale of goods and services, to render
27 the exercise of jurisdiction over it by the California court consistent with traditional notions of
28 fair play and substantial justice.

14. The Court has jurisdiction over Defendant Overflow Partners LLC because it is a California limited liability company authorized to do business in the State of California and is registered with the California Secretary of State. Overflow Partners LLC has sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the California market through the advertising, marketing, and sale of goods and services, to render the exercise of jurisdiction over it by the California court consistent with traditional notions of fair play and substantial justice.

15. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 393(a) because Plaintiff seeks the recovery of civil penalties under the Labor Code. Defendant transacts business in this County, has employed drivers in this County, has misclassified drivers as independent contractors in this County, and has committed the violations alleged herein in this County.

THE PARTIES

16. Plaintiff brings this law enforcement action on behalf of the State of California and Aggrieved Employees. Plaintiff and the Aggrieved Employees as set forth herein are drivers currently and/or formerly employed by Defendants, but Defendants misclassified the drivers as independent contractors rather than employees.

17. Plaintiff, Gustavo Rivas Ramos, resides in California and worked for Defendants as a driver.

18. Defendant DI Overnight, LLC is and at all relevant times has been engaged in the business of providing delivery services in the State of California. Defendant DI Overnight, LLC provides therapy and employs numerous drivers (misclassified as independent contractors) in this Judicial District.

19. Defendant DI Logistics, LLC and at all relevant times has been engaged in the business of providing delivery services in the State of California. Defendant DI Logistics, LLC provides therapy and employs numerous drivers (misclassified as independent contractors) in this Judicial District.

20. Defendant Overflow Partners LLC is and at all relevant times has been engaged in

1 the business of providing delivery services in the State of California. Defendant Overflow
2 Partners LLC provides therapy and employs numerous drivers (misclassified as independent
3 contractors) in this Judicial District.

4 **FACTUAL ALLEGATIONS**

5 **A. Defendants hire and employ drivers to run their delivery business.**

6 21. Defendants run a delivery business that “specializes in Overnight, Same Day and
7 Scheduled services.”¹

8 22. Defendants provide delivery services to a wide-range of business, including court
9 reporters, payroll companies, mortgage and real estate companies, financial institutions, hospitals,
10 medical supplies and pharmaceutical companies, the entertainment industry, and gift basket
11 companies, in California, Nevada, and Arizona.²

12 23. Defendants offer several same day delivery options, including “Stat (Immediate),
13 Express (2 hour) and Regular (4 hour),” to meet the needs of their customers.³

14 24. Defendants rely on hiring and employing numerous drivers to carry out their
15 delivery business. As part of the “Deliver-It Promise,” Defendants state, “Our drivers are out day
16 and night servicing our varied client base” and their drivers are part of a “streamlined operation”
17 where “through weekly meetings and daily interaction with our drivers” Defendants keep their
18 drivers “informed and empowered to deliver with the highest quality and integrity.”⁴

19 25. Defendants’ drivers are transportation workers who play a direct role in regularly
20 transporting goods through state borders via the channels of interstate commerce.

21 **B. Defendants willfully misclassify their drivers as independent contractors.**

22 26. Despite labeling their drivers as independent contractors, Defendants cannot
23 sustain their burden of demonstrating that their drivers are independent contractors instead of
24 employees under California Labor Code § 2775 *et seq.* Under California Labor Code § 2775,
25 Defendants must demonstrate their drivers are (1) free from their control and direction in
26 connection with the performance of the work, both under the contract for the performance of the

27 ¹ Available at <https://www.deliver-it.com/about> (last visited January 31, 2025).

28 ² *Id.*

³ *Id.*

⁴ *Id.*

1 work and in fact; (2) that their drivers perform work that is outside the usual course of Defendants’
2 business; **and** (3) that their drivers are customarily engaged in an independently established trade,
3 occupation, or business of the same nature as that involved in the work performed. Here,
4 Defendants cannot demonstrate any of the above with respect to their drivers.

5 27. First, Defendants exercise direct and indirect control over the way drivers perform
6 their job duties and the terms and conditions of their work. Defendants’ control over their drivers
7 includes, but is not limited to, the following:

- 8 i. Defendants direct their drivers’ deliveries through weekly meetings and daily
9 interactions;
- 10 ii. Defendants control how drivers perform their job duties through their assignments
11 and requirements for how their deliveries must be made (timing and otherwise);
- 12 iii. Defendants also exercise substantial control over the wage scale and pay policies
13 used to compensate Plaintiff and the Aggrieved Employees, including the required
14 tasks for which they are compensated and those for which they are not
15 compensated;
- 16 iv. Defendants control the equipment, technology, and software drivers must use and
17 how they must use it when making deliveries and performing other job tasks;
- 18 v. Defendants control employees through attendance, uniform, delivery, and bonus
19 policies that impact the compensation of drivers;
- 20 vi. Defendants exercise control over their drivers through numerous policies,
21 including but not limited to, driving and vehicle requirements, performance
22 evaluation, GPS, and route assignment; and,
- 23 vii. Defendants retain the right to assign, reassign, disqualify, suspend, and terminate
24 the employment of their drivers.

25 28. Second, the work performed by the Aggrieved Employees is within the usual
26 course of business of Defendants. Defendants are in the delivery business. In fact, Defendants’
27 delivery business is evidenced by the following:

- 28 i. Defendants market themselves as an “overnight and same day shipping” business

and they “specialize in overnight deliveries”;⁵

ii. Customers pay Defendants for their delivery services;

iii. Defendants sell delivery services;⁶ and,

iv. Defendants refer to the Aggrieved Employees as “our drivers”⁷;

29. Third, the Aggrieved Employees are not engaged in a trade, occupation or business that is established independently from Defendants. Rather, Defendants are engaged in the same business as their drivers—providing delivery services to customers.⁸

30. The work relationship between the Aggrieved Employees and Defendants does not satisfy any test for justifying independent contractor classification, whether the ABC Test, including *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, and Labor Code §§ 2775-2787; the control test and secondary factors set forth in *S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341; or the multi-factor test used under the Fair Labor Standards Act (FLSA).

C. Defendants required job applicants and employees to sign unlawful agreements.

31. Defendants have required their delivery drivers, including Plaintiff and the Aggrieved Employees (whether as legal employees and/or job applicants), to agree, in writing, to terms and conditions which have been known by Defendants and/or its agents, managers, superintendents, or officers, to be prohibited by law. This includes, but is not necessarily limited to, requiring Plaintiff and Aggrieved Employees to agree in writing, that they are independent contractors when they are really employees under applicable law.

D. Defendants jointly employ drivers.

32. Defendants are joint employers under *Martinez v. Combs* (2010) 49 Cal.4th 35, 64 (“to employ ... under the [wage order], has three alternative definitions. It means: (a) to exercise control over the wages, hours, or working conditions, or (b) to suffer or permit to work, or (c) to engage, thereby creating a common law employment relationship.”). Defendants are joint

⁵ Available at <https://www.deliver-it.com/about> (last visited January 5, 2025).

⁶ Available at <https://www.deliver-it.com/assets/pdf/Rates%20and%20Services.pdf> (last visited January 31, 2025).

⁷ Available at <https://www.deliver-it.com/services> (last visited January 31, 2025).

⁸ Available at <https://www.deliver-it.com/> (last visited January 31, 2025).

employers of the Aggrieved Employees under each alternative standard.

33. Defendants have operated in a coordinated and joint fashion to control, directly or indirectly, the wages, hours, and working conditions of Plaintiff and the Aggrieved Employees as identified in Paragraph 27, above, which Plaintiff realleges herein.

34. Furthermore, Defendants also exercised control, permitted to work, and/or engaged the Aggrieved Employees through the following:

- i. Determining the amount of compensation earned by drivers;
- ii. Paying wages;
- iii. Scheduling the payment of wages;
- iv. Owning equipment, such as GPS and/or vans, used by drivers to make deliveries;
- v. Training drivers to make deliveries;
- vi. Maintaining the authority to hire, transfer, promote, discipline or discharge drivers;
- vii. Establishing the work schedules and assignments of drivers; and,
- viii. Supervising and evaluating the performance of drivers.

E. Defendants fail to pay drivers for all hours worked and reimburse them for job expenses.

35. Defendants have and continue to routinely require and/or suffer and permit Plaintiff and the Aggrieved Employees to regularly work-off-the-clock by failing to pay drivers for their time and deliveries.

36. For example, Defendants routinely short their delivery drivers on their pay. In effect, Defendants have as a matter of regular business practice required and/or suffered and permitted Plaintiff and the Aggrieved Employees to regularly work off-the-clock without compensation. Defendants also have routinely failed to compensated Plaintiff and Aggrieved Employees for time during which they are engaged to be waiting and time for which they are subject to Defendants' control, including during meal periods.

37. Plaintiff and the Aggrieved Employees have worked and continue to work off-the-clock on a routine basis. Further, when Plaintiff and the Aggrieved employees work over 8 hours in a workday and/or over 40 hours in the workweek, Defendants fail to pay them overtime

1 wages. Defendants also do not pay earned wages and at least minimum wage for the off-the-
2 clock work either.

3 38. Defendants have also failed to fully reimburse Plaintiff and the Aggrieved
4 Employees for expenditures they had to incur to carry out their job functions, including but not
5 necessarily limited to, fuel, insurance, repairs, tolls, tickets, and indemnification for third party
6 claims.

7 **F. Defendants fail to provide off-duty meal and rest periods to drivers.**

8 39. Defendants have consistently failed to provide Aggrieved Employees with an off-
9 duty meal period of no less than 30 minutes by the fifth hour of work and another off-duty meal
10 period of no less than 30 minutes by the tenth hour of work.

11 40. Defendants also have consistently failed to authorize and permit off-duty rest
12 periods of at least 10 minutes rest time for every four hours of work or major fraction thereof.

13 41. Even when Aggrieved Employees manage to grab something to eat or a little
14 downtime, they are not completely removed from duty, nor do they have the opportunity to take
15 compliant meal and rest periods. Often, they make deliveries and carry out their duties while
16 having their meal or snack. Additionally, Defendants monitor Aggrieved Employees via GPS
17 throughout the day.

18 42. Defendants have failed to comply with Labor Code §§ 512 and 226.7, and the
19 applicable Wage Order, by failing to provide off-duty meal periods within the time frames and
20 for the duration required by law, failing to authorize and permit off-duty rest periods within the
21 time frames and for the duration required by law, failing to remove Plaintiff and Aggrieved
22 Employees from all duty and employer control during meal and rest periods, and failing to pay
23 Plaintiff and Aggrieved Employees separately for their rest period time.

24 43. As a matter of policy and practice, Defendants also have not compensated Plaintiff
25 and Aggrieved Employees at least one hour of pay at their regular rates of pay for each workday
26 that a meal period was not provided in compliance with the provisions of the applicable Wage
27 Order. As a matter of policy and practice, Defendants further have failed to compensate Plaintiff
28 and Aggrieved Employees at least one hour of pay at their regular rates of pay for each workday
that rest periods were not provided in compliance with the requirements of the applicable Wage

Order. *See* Labor Code § 226.7(c); Wage Order No. 9 at ¶ 11(D) and ¶ 12(B); *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1108; *Safeway, Inc. v. Superior Court* (2015) 238 Cal. App.4th 1138, 1154.

G. Defendants knowingly and intentionally do not provide drivers with itemized wage statements and do not timely pay all wages owed.

44. By willfully misclassifying their drivers as independent contractors and deliberately constructing a pay policy that does not pay them for all hours worked, Defendants have knowingly, intentionally, and willfully devised a pay policy that does not produce itemized wage statements in accordance with Labor Code § 226, nor itemized wage statements that contain accurate information.

45. Defendants knowingly and intentionally do not provide itemized wage statements to their drivers. Defendants also do not truthfully and accurately inform the drivers of the gross wages actually earned, the total hours actually worked, all deductions, net wages actually earned, and the actual hourly rates in effect during the pay period and the corresponding number of actual hours worked at each hourly rate by the employee.

46. Plaintiff and Aggrieved Employees cannot promptly and easily determine alone from the information provided by Defendants (if any) their accurate gross wages earned, total hours worked, all deductions, net wages earned, the actual hourly rates in effect during the pay period and the corresponding actual number of hours worked at each hourly rate by the employee.

47. By willfully misclassifying their drivers as independent contractors and deliberately constructing a pay policy that does not pay them for all hours worked, Defendants also have willfully and intentionally devised a pay policy that does not compensate Plaintiff and other Aggrieved Employees all earned wages at least twice during each calendar month, on days designated in advance by Defendants as the regular paydays, in violation of California Labor Code § 204.

48. By willfully misclassifying their drivers as independent contractors and deliberately constructing a pay policy that does not pay them for all hours worked, Defendants also have willfully and intentionally devised a pay policy that does not compensate Aggrieved Employees who have separated from their employment with Defendants, all wages (including all

1 off-the-clock and overtime wages) following said separation from employment.

2 **H. Defendants failed to timely pay drivers all wages due and timely pay all wages**
3 **owed upon separation.**

4 49. Defendants have failed to pay Plaintiff and the Aggrieved Employees all earned
5 wages twice during each calendar month, on days designated in advance by Defendants as the
6 regular paydays, in violation of California Labor Code § 204. In fact, Defendants often paid
7 drivers late and failed to pay drivers all money owed for hours worked. The violations have been
8 ongoing, deliberate, willful and intentional.

9 50. In violation of California Labor Code §§ 201-202, Defendants also have failed to
10 timely pay Aggrieved Employees who have separated from Defendants all earned wages
11 (including all off-the-clock and overtime wages) following their separation.

12 **I. Defendants willfully disregard the responsibilities of an employer.**

13 51. Defendants knew that their drivers should be classified as employees rather than
14 independent contractors under California law and entitled to overtime, minimum wage, and the
15 other rights and benefits to which workers are entitled under the California Labor Code and
16 applicable Wage Orders, as alleged herein. Defendants' violations of the California Labor Code
17 alleged herein have been knowing, willful, and intentional.

18 **CAUSE OF ACTION**
19 **Statutory Penalties Pursuant to PAGA (Labor Code §§ 2698, *et seq.*)**
20 **(On behalf of All Aggrieved Employees)**

21 52. Plaintiff hereby realleges and incorporates by reference the allegations set forth
22 above as if fully set forth herein.

23 53. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA)
24 has applied to Defendants' employment of Plaintiff and the Aggrieved Employees.

25 54. At all times herein set forth, the PAGA provided that any provision of the
26 California Labor Code that provides for a civil penalty to be assessed and collected by the Labor
27 and Workforce Development Agency (LWDA) for violations of the California Labor Code may,
28 as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf
of her or himself and other current or former Aggrieved Employees pursuant to procedures
outlined in California Labor Code § 2699.3.

1 55. At all times herein set forth, the PAGA provided that for reoccurring violations of
2 Labor Code provisions that do not themselves contain a civil penalty, there are established civil
3 penalties of \$100 for each Aggrieved Employee per pay period, which may be lowered to \$25 per
4 Aggrieved Employee per pay period for certain violations of Labor Code § 226, and \$200 for
5 each Aggrieved Employee per pay period for violations shown to be malicious, fraudulent, or
6 oppressive. Cal. Lab. C. § 2699(f).

7 56. Plaintiff was employed by Defendants and the violations alleged herein were
8 committed against her during her time of employment and she is, therefore, an Aggrieved
9 Employee. Plaintiff and other employees are “Aggrieved Employees” as defined by California
10 Labor Code § 2699(c) in that they are all current or former employees of Defendants who have
11 personally suffered the violations alleged herein, as they are caused by Defendants’ standardized
12 form agreement and uniform compensation policies that apply to all Aggrieved Employees.

13 57. Plaintiff has fulfilled the filing requirements of California Labor Code § 2699.3 to
14 bring this law enforcement action for civil penalties and injunctive relief under California Labor
15 Code § 2699(a) and (f). On November 20, 2024, Plaintiff provided written notice online to the
16 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
17 Code alleged to have been violated, including the facts and theories to support the alleged
18 violations. It has been more than 65 days since Plaintiff submitted her written notice, and the
19 LWDA has not provided notice of its intent to investigate. Accordingly, Plaintiff has satisfied the
20 administrative prerequisites under California Labor Code § 2699.3(a) to recover civil penalties
21 against Defendants for violations of California Labor Code stated above.

22 58. As a proxy of the State of California and on behalf of the Aggrieved Employees,
23 Plaintiff is entitled to recover civil penalties for the State of California and the Aggrieved
24 Employees for Defendants’ violations of the Labor Code during the applicable limitations period
25 in the following amounts:

- 26 i. For engaging in a pattern or practice of willfully misclassifying the Aggrieved
27 Employees as independent contractors, not less than ten thousand dollars
28 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each

violation; or alternatively, not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation that is not part of a pattern or practice (penalty amounts established by California Labor Code § 226.8(b) and (c));

ii. For violations of California Labor Code §§ 221-223 for unlawfully withholding wages, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent or willful violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code § 225.5);

iii. For violations of California Labor Code §§ 1182.12 and 1197 for failure to pay minimum wages, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars and fifty (\$250.00) for each Aggrieved Employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (penalty amounts established by California Labor Code § 1197.1);

iv. For violations of California Labor Code §§ 510 and 1198 for failure to pay premium overtime compensation, including unpaid overtime resulting from performing off-the-clock work, fifty dollars (\$50.00) for each Aggrieved Employee for each initial violation for each pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558);

v. For violations of California Labor Code § 1174 for failure to keep accurate payroll records, five hundred dollars (\$500.00) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);

vi. For violations of California Labor Code § 226 for knowingly and intentionally failing to furnish wage statements, one hundred dollars (\$100) for each Aggrieved

Employee per pay period, as Defendants did not provide itemized payroll statements. Alternatively, if Defendants are determined to have provided wage statements, then Plaintiff seeks civil penalties for such statements being inaccurate and incomplete, in the amount of twenty-five dollars (\$25) for each Aggrieved Employee per pay period (penalty amounts established by California Labor Code §§ 2699(f)(2)(A)(i); 226.3);

vii. For violations of California Labor Code § 204 for knowingly and intentionally failing to timely pay all wages earned each pay period, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code § 210);

viii. For violations of California Labor Code §§ 201-203 for knowingly and intentionally failing to timely pay all wages owed upon the discharge or termination of an employee, a penalty up to 30 days of continued compensation for each Aggrieved Employee (penalty amount established by California Labor Code § 256);

ix. For violations of California Labor Code §§ 201-202, and 221-223 for failing to pay for all hours worked, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each violation determined to be malicious, fraudulent, or oppressive (penalty amounts established by California Labor Code § 2699(f)(2));

x. For violations of California Labor Code §§ 226.7 and 512 for failure to provide off-duty meal and rest periods, fifty dollars (\$100.00) for each Aggrieved Employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$200.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts

established by California Labor Code § 2699(f)(2));

xi. For violations of California Labor Code § 432.5 for requiring employees to agree in writing to a term or condition of employment the employer knows is prohibited by law (including, but not necessarily limited to, requiring the employees to agree in writing to unlawful independent contractor agreements and unlawful arbitration agreements), one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each violation determined to be malicious, fraudulent, or oppressive (penalty amounts established by California Labor Code § 2699(f)(2)); and,

xii. For violations of California Labor Code § 2802 for unreimbursed business expenses, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each violation determined to be malicious, fraudulent, or oppressive (penalty amounts established by California Labor Code § 2699(f)(2)); and,

xiii. For violations of California Labor Code § 558 for failure to comply with IWC Wage Orders, fifty dollars (\$50.00) for each underpaid employee for each initial violation for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each subsequent violation for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages (penalty amounts established by California Labor Code § 558);

59. Pursuant to California Labor Code § 2699(e) and (k)(1), Plaintiff, on behalf of the State of California and other Aggrieved Employees, seeks injunctive relief enjoining Defendants as follows:

i. Reclassify Plaintiff and Aggrieved Employees as employees rather than

1 independent contractors and provide them with all rights and safeguards afforded
2 by the California Labor Code, IWC Wage Orders, and other applicable laws;
3 ii. Compensate Plaintiff and Aggrieved Employees for all time spent on work tasks
4 or engaged to be waiting at no less than their regular hourly rate;
5 iii. Compensate Plaintiff and Aggrieved Employees for all daily and weekly overtime
6 work at the applicable premium rate;
7 iv. Timely compensate Plaintiff and Aggrieved Employees all earned wages twice
8 during each calendar month, on days designated in advance by Defendants as
9 regular paydays;
10 v. Provide Plaintiff and Aggrieved Employees with accurate, itemized wage
11 statements in accordance with Labor Code § 226, including wage statements that
12 accurately state the gross wages earned, total hours worked, all deductions, net
13 wages earned, and “all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the employee;”
15 and,
16 vi. Pay all earned and unpaid wages due to Aggrieved Employees immediately upon
17 discharge if the discharge is involuntary and within 72 hours of discharge if it is
18 voluntary, in accordance with Labor Code § 201-202.
19 60. Pursuant to California Labor Code § 2699(g), Plaintiff, on behalf of the State of
20 California and the other Aggrieved Employees, is entitled to an award of reasonable attorneys’
21 fees and costs.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of the State of California and the Aggrieved
24 Employees, request the following relief:

- 25 a) That the Court find that Defendants have been in violation of California Labor
26 Code §§ 201-204, 210, 221-223, 226, 226.7, 226.8, 232, 432.5, 510, 512, 558,
27 1174, 1182.12, 1197, 1198, 1197.5(j), and 2802;
28 b) That the Court award the injunctive relief described above;
c) That the Court enjoin Defendants from future violations of the California Labor

1 Code and order an audit and accounting of payroll records to determine the
2 amount of restitution of all unpaid wages owed to Plaintiff and other Aggrieved
3 Employees;

- 4 d) That the Court award to Plaintiff and the Aggrieved Employees civil penalties as
5 provided herein, including but not limited to Labor Code §§ 210, 225.5, 226.3,
6 226.8, 256, 558, 1174.5, 1197.1, 2699(f);
- 7 e) That the Court award prejudgment interest under Cal Civ. C. § 3287, and other
8 applicable law;
- 9 f) That Plaintiff be awarded reasonable attorneys' fees and costs pursuant to Labor
10 Code § 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable
11 law;
- 12 g) That the Court award any and all other applicable civil or statutory penalties, as
13 provided by law; and
- 14 h) For such other and further relief as this Court deems just and proper.

15 Respectfully submitted,

16 DATED: February 14, 2025

17 **SCHNEIDER WALLACE**
18 **COTTRELL KONECKY**

19 By: Frank J. White Jr.
20 Frank J. White Jr.
21 Attorneys for Plaintiff
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